

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

ABUL HOWARD,

Plaintiff,

vs.

STATE OF NEVADA and
ATTORNEY GENERAL OF NEVADA,

Defendant,

2:10-cv-1226-GMN-RJJ

REPORT AND RECOMMENDATION
OF UNITED STATES
MAGISTRATE JUDGE

Petitioner, Abdul Howard, has filed a Petition for Declaratory Judgment (#1). Howard is using a civil action to challenge his conviction in state court. The attempt to use this action to reverse his criminal conviction is not allowed. Such actions are barred by the Supreme Court decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), which held that no civil action could be filed if a favorable result would undermine or question the validity of the conviction or sentence, unless the conviction or sentence had been vacated or reversed. The conviction and sentence have not been reversed or set aside and Howard continues to serve his sentence as a state prisoner.

Further, Howard did not pay the filing fee or submit an application to proceed *in forma pauperis*. Based on the foregoing and good cause appearing therefore,

RECOMMENDATION

IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that this case be **DISMISSED WITH PREJUDICE.**

NOTICE

Pursuant to Local Rule IB 3-2 [former LR 510-2] any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days after service of this Notice. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986). This Circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991); Britt v. Simi Valley United Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 24th day of February, 2011.



ROBERT J. JOHNSTON
United States Magistrate Judge